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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1911/2023**

**MOHD. REHAN**

.....Petitioner

Through: Mr. Mohd. Asif, Ms. Rajeshwarhi and  
Mr. Asif Malik, Advocates.

versus

**THE STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Manoj Pant, APP for State.  
SI Paras Dhyani, P.S. Jaitpur.  
Mr. Zeeshan Diwan (DHCLSC) with  
Mr. Devender Kumar and Mr. Ahmed  
Faraz, Advocates for complainant.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**25.07.2024**

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 0719/2022 dated 01.12.2022 registered under sections 354-A/354-D of the Indian Penal Code, 1860 ('IPC') and sections 8/12 of the Protection of Children from Sexual Offence Act, 2012 ('POCSO Act') at P.S.: Jaitpur, Delhi.

2. Notice on this petition was issued on 31.05.2023.
3. Status report dated 'nil' has been filed on behalf of the State.
4. Nominal roll dated 23.08.2023 has also been received from the Jail Superintendent.
5. After completion of investigation, chargesheet dated 13.01.2023 has been filed in the matter; and at present, the petitioner is undergoing



trial for the offences under sections 354-A and 354-D of the IPC and sections 8 and 12 of the POCSO Act.

6. The prosecution had cited 15 witnesses. Of those, 06 public witnesses were dropped after proceedings under section 294 Cr.P.C. were conducted; and the 03 other public witnesses have already completed their deposition.
7. Mr. Mohd. Asif, learned counsel appearing for the petitioner submits, that as would be seen from a perusal of statement dated 08.11.2023 recorded under section 164 Cr.P.C. as set-out in the chargesheet, the essential allegation against the petitioner is that he had followed the complainant and had made overtures to her; and that on one occasion on 30.11.2022, he is alleged to have dragged the complainant by her hand into a lane near her house and that he proposed marriage to her, whereupon she had slapped him.
8. It is further pointed-out, that the chargesheet also narrates, that the petitioner and the complainant had interacted on Instagram; that they had befriended each other, but subsequently, when the complainant discovered that the petitioner used to drink alcohol, she broke her friendship with him.
9. Mr. Asif submits, that in her court deposition on 08.11.2023, appearing as PW-1, the complainant has made the same allegations against the petitioner; which have also been repeated by the complainant's mother when she deposed in court on 14.03.2024. Counsel submits, that in any case, the deposition of the complainant's mother ought to be discarded as hearsay.



10. It is pointed-out, that considering the nature of the allegations and the fact that the petitioner has already suffered custody of about 01 year and 08 months, as would be seen from the Nominal Roll dated 23.08.2023 filed in the matter, the petitioner deserves to be enlarged on regular bail.
11. On the other hand, Mr. Manoj Pant, learned APP appearing for the State submits, that the complainant's statement recorded under section 164 Cr.P.C., as also her court deposition, clearly make-out a case under section 354-D IPC as well as under sections 8 and 12 of the POCSO Act, which entail punishment upto 05 years; and are therefore required to be dealt with severely.
12. Adding to the submissions made on behalf of the State, Mr. Zeeshan Diwan, learned counsel appearing for the complainant submits that since trial is under-way, the presumption of guilt contained in section 29 of the POCSO Act also gets triggered; by reason of which the petitioner does not deserve to be enlarged on bail.
13. It is pointed-out that at the time of commission of the offences, the complainant was about 15 years of age whereas the petitioner was about 22 years old, which adds to the venality of the offences, considering the age difference between the complainant and the accused. In this regard, Mr. Diwan also draws attention to the decision of this court in ***Dharmander Singh @ Saheb vs. The State (Govt. Of NCT, Delhi)***<sup>1</sup> on the point of applicability section 29 of the POCSO Act.

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<sup>1</sup> 2020:DHC:2838



14. Furthermore, Mr. Diwan submits, on instructions, that the complainant and her family are being put under pressure in their neighbourhood to drop the proceedings against the petitioner, since that is also the place where the petitioner and his family reside. He submits that considering their social reality, namely that the parties belong to the same community, the complainant and her family would come under further pressure if the petitioner is enlarged on bail.
15. Upon a query made, learned APP has confirmed, on instructions of the Investigating Officer ('I.O.') who is present in court, that the deposition of the complainant (PW-1) as well as her mother (PW-2), including their cross-examination, has been completed as of yesterday.
16. Upon an overall conspectus of the facts and circumstances of the case, the consideration that weigh with the court at this stage, are the following :
  - 16.1. The petitioner has already undergone custody of about 01 year and 08 months as an under-trial for offences for which the punishment prescribed is between 03 and 05 years of imprisonment;
  - 16.2. The deposition of all public witnesses, including the complainant and her mother, already stands concluded;
  - 16.3. Even as per the allegations in the chargesheet, the incident alleged against the petitioner did not involve any violence or brutality; and though the offence of stalking under section 354-D I.P.C. has been alleged, there is no allegation of use of any criminal force in the process.



16.4. Though section 29 of the POCSO Act does raise the bar for grant of bail to a person accused of offences under that statute, including for the offence under section 7 thereof, as held by this court in *Dharmander Singh* (supra), section 29 does *not* create an absolute bar to grant of bail merely because a person is undergoing trial for offences under the POCSO Act. Furthermore, in the said decision this court has set-out certain real-life considerations, based on which the grant or refusal of bail should be considered. In the opinion of this court, when tested on the touchstone of those criteria, there is nothing to suggest that the petitioner in the present case does not deserve to be enlarged on regular bail, of course with certain conditions imposed for that purpose.

17. Upon a conspectus of the foregoing and as a sequitur thereto, the present petition is allowed. The petitioner **Mohd. Rehan s/o late Md. Abrar** is admitted to *regular bail* pending trial, subject to the following conditions :

17.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 surety in the like amount from family members, to the satisfaction of the learned trial court;

17.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;



- 17.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 17.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
- 17.6. To further emphasise, the petitioner is cautioned not to accost, approach or interact with the complainant or with any member of her family, whether directly or indirectly, while on bail. Furthermore, the complainant is granted liberty to approach the I.O. in the event any inducement or threat is extended by the petitioner to her or to any member of her family.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
20. The bail petition stands disposed-of.
21. Other pending applications, if any, are also disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**JULY 25, 2024/ V.Rawat**